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In re Application of
Craig A. Schell et al
Application No. 10/057,476
Filed: January 24, 2002
Attorney Docket No. P-TN-2547

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OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(6), filed July 1, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional Application No. 60/266,893, filed February 7, 2001.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

An amendment to the first sentence of the specification following the title to include a reference to prior-filed provisional Application No. 60/266,893, filed February 7, 2001, was included with the instant petition under 37 CFR 1.78(a)(6)..

The instant pending nonprovisional application was filed on January 24, 2002, within twelve months of the filing date of prior-filed provisional Application No. 60/266,893, which was filed on February 7, 2001, and for which priority is claimed. While a reference to the prior-filed provisional application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the Combined Declaration and Power of Attorney for Patent Application.

The current procedure where a claim for priority under 37 CFR 1.78(a)(5) is not included the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office

notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application has been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(5). However, on the other hand, if the USPTO does not note the claim for priority to the provisional application in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(6).¹ In the instant case, the Office noted the claim for priority of provisional Application No. 60/266,893 in the Declaration, as shown by its inclusion on the filing receipt.

In view of the above, the \$1,280 fee assessed to the instant petition is unnecessary and will be credited to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to the undersigned at (703)305-8680. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center AU 3721 for processing the amendment filed July 1, 2002 and for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for the benefit of provisional Application No. 60/266,893, filed on February 7, 2001.



Frances Hicks

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ Note 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.